No. 10,317

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MINORU YASUI,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF OF AMICUS CURIAE IN SUPPORT OF APPELLANT.

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STATEMENT OF THE PLEADINGS AND FACTS DISCLOSING BASIS OF COURTS' JURISDICTION.

This is an appeal prosecuted by the appellant from a judgment of conviction followed by a sentence to one year of imprisonment and the imposition of a $5000.00 fine rendered and entered against him by the United States District Court in and for the District of Oregon, sitting without a jury, in a criminal case arising out of an indictment charging him with the commission, on March 28, 1942, of a misdemeanor under the provisions of Public Law No. 503 in that he violated the curfew regulation imposed upon him as a person of Japanese ancestry by the provisions of Public Proclamation No. 3 promulgated by General DeWitt. The written opinion of the Court below is reported in ..... Fed. Supp. ..... and also appears in the record herein at pages 13 to 53.

The Statutory Provisions Believed to Sustain the Jurisdictions.

The District Court below had jurisdiction of this case under the provisions of Title 28, U. S. Code, Section 41, subdivision (2).

The Circuit Court of Appeals, Ninth Circuit, has jurisdiction upon appeal to review the judgment of the District Court below by virtue of the provisions of Title 28, U. S. Code, Section 225, subdivision (a) First and subdivision (d).

Statute and Proclamation the Validity of Which Are Involved.

1. *Public Law No. 503,* 77th Congress, 2nd Session, Chap. 191, H.R. 6758, approved March 21, 1942, and now codified as Title 18 *U. S. Code,* sec. 97a, the validity of which is involved herein, reads as follows:

> "Whoever shall enter, remain in, leave, or commit any act in any military area or military zone which has been prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both, for each offense."

2. *Public Proclamation No. 3,* promulgated March 24, 1942, by J. L. DeWitt, Lieutenant-General, U. S.

Army, commanding the Western Defense Command and Fourth Army, the validity of which is involved herein, imposed "curfew" regulations upon the appellant as a person of Japanese ancestry, prohibited him from traveling beyond a distance of five miles from his residence and denied him the right to the possession, use and enjoyment of certain articles of personal property, to-wit, weapons, radios, cameras, signal devices and sundry other articles. This proclamation is set forth verbatim in 7 *Fed. Reg.* 2543 and also at pages 330 and 331 in *House Report No. 2124* of May 1942 as authorized by House Resolution 113 of the 77th Congress, 2nd Session.

Pleadings Necessary to Show the Existence of the Jurisdictions.

The pleadings necessary to show the existence of the jurisdictions herein are as follows: the *indictment* (R. 2); a *demurrer to indictment* which appears to have been a special demurrer interposed orally and later withdrawn (R. 9); *stipulation amending indictment* (R. 6); *order amending indictment* (R. 8); the appellant's *plea of not guilty* (R. 9); *general demurrer* to indictment interposed at the close of the testimony (at R. 10) and orally termed "a motion for a directed verdict and for a verdict and judgment of not guilty" and also termed "a motion for a mandatory verdict or judgment of not guilty" (Record, pages 10 and 88), and *order overruling this general demurrer* or motion for dismissal of the indictment. (R. 11.)

The *judgment of conviction* appears in two forms, the first termed the *"Finding of Guilt"* (R. 12) and the second which is incorporated in the written *opin-*

ion of the Court below. (R. 50.) The *sentence* to imprisonment and judgment imposing the *fine* appear in the record at pages 51 and 52. The *notice of appeal* appears at R. 214, the *assignment of errors* at R. 217 and the *statement of points on appeal* at R. 221.

STATEMENT OF THE CASE.

The appellant was born in Hood River, Oregon, of Japanese parents on October 19, 1916. (R. 77, 120, 148.) Hood River is his domicile and residence. His father was a Hood River merchant and his mother a housewife. (R. 149-151.) He and his parents are Methodists. (R. 178.) He was taken to Japan for a visit during a summer vacation when he was eight years of age. (R. 151, 182.) He graduated from a public grammar school and high school in Hood River. (R. 153-154.) He studied the Japanese language in a Japanese language school for three years. (R. 176-177.) He graduated from the University of Oregon in arts and letters in June of 1937, receiving a bachelor of arts degree. (R. 154.) He was then 20 years 7 months of age. He received his commission as a second lieutenant in the U. S. Army Officers Reserve Corps upon completion of his R.O.T.C. course and took his *oath of allegiance* to the United States in December, 1937, after attaining his majority and when his age was 21 years 2 months. (R. 174.) (The opinion of the Court below (R. 48) erroneously states this occurred during his minority and that by reason thereof was not evidence of his election to

accept citizenship in the United States.) Thereafter, he graduated from the University of Oregon Law School, receiving his bachelor degree in law in June of 1939 at the age of 22 years 8 months. (R. 154, 174.) He is a registered voter and has voted in elections. (R. 154.)

After taking the bar examination in the interval between June and August of 1939 he worked on his father's farm and upon notification in September of 1939 that he had successfully passed the examination he practiced law for a short time in Hood River and then in Portland. (R. 155.) He must also have taken an oath of allegiance to the United States when he was admitted to the bar. Upon the recommendation of his father, Dean Wayne L. Morse of the Oregon Law School, several university officials (R. 171) and other persons in Hood River and Portland he obtained employment in the office of the Consulate General of Japan at Chicago in April of 1940. (R. 151-156.) His tasks there were those of a general secretary in charge of correspondence (R. 157) and later as a public relations man. (R. 133, 137.) He received a salary of $125.00 per month. (R. 157.) As a part of his employment he made speeches before public bodies. A few of these speeches concerned the Sino-Japanese war and explained the Japanese position thereon. (R. 158, 159, 171, 183-185, 189.) While so employed among other American employees (R. 188) he was twice registered as an employee with the Department of State pursuant to regulations. (R. 81, 105, 106.) The certificates of registration appear at record pages 58 and 113.

Sometime during the day or evening of December 7, 1941, the appellant first heard of the Japanese attack on Pearl Harbor. (R. 159.) He resigned his position on December 8, 1941, because he was a loyal American. (R. 160.) On December 8, 1941, Congress declared war on Japan. On the same day the appellant tendered his services to his country, to Headquarters, Second Military Area, at Portland, by telegram (R. 162) and received a letter bearing said date in response instructing him to hold himself in readiness for an early call to active duty. (R. 162 and 84.) He received a telegram from his father on December 8th urging him to offer his services to his country. (R. 160, 161.) Thereafter, on March 28, 1942, appellant violated the curfew restrictions imposed upon American citizens of Japanese ancestry by Public Proclamation No. 3 promulgated on March 24, 1942, by General DeWitt. (See 7 F.R. 2543.) He surrendered himself to the Portland Police Department on March 28, 1942, for the purpose of testing the constitutionality of this discriminatory curfew regulation (R. 111), was taken into custody (R. 95, 96, 99) and was thereafter indicted under Public Law No. 503 (18 U.S.C.A., sec. 97a) for a violation of the proclamation.

Questions Involved.

1. Is Public Law No. 503 void for uncertainty in failing to prescribe definite military areas and in failing to specify the particular restrictions upon the activities of persons therein?

2. Is the statute unconstitutional and void as delegating to Courts and juries the legislative power to determine what acts thereunder shall be deemed to be criminal and punishable?

3. Is the statute unconstitutional and void as an attempt to delegate to executive and administrative officers legislative power to be exercised *in futuro* in prescribing military areas of unlimited geographical extent and restraints of an unknown nature upon persons therein?

4. Is the statute as applied to appellant herein and to all American citizens of Japanese ancestry, in enforcing the provisions of Public Proclamation No. 3, to the exclusion of citizens of other racial origin, unconstitutional and void as abridging the fundamental rights and liberties of American citizens safeguarded by the U. S. Constitution and amendments thereto and especially by the 5th Amendment?

5. Are the statute and proclamation void because of the inseverability of their void features?

6. Can the appellant judicially be declared an alien enemy in a judgment of conviction where the indictment admits and alleges his citizenship?

7. Can the appellant judicially be declared an alien enemy despite the fact that he is a native-born citizen of this country and a national thereof, residing and domiciled here, and entitled to all the constitutional rights, liberties, privileges and immunities of national and state citizenship by virtue of the 14th Amendment and the Nationality Law when there is

not a scintilla of evidence in the record that he has lost citizenship or nationality under any of the methods prescribed by the nationality and expatriation laws of this country or by any other legally recognized method whatever?

Manner in Which Questions Involved Are Raised.

The questions involved are raised by the indictment (R. 2), the amended indictment (R. 8); the plea of not guilty (R. 9); the general demurrer to the indictment (motion for directed verdict and judgment of not guilty) (R. 10, 88); the judgment of conviction (R. 12) and opinion of the Court below (R. 50), and the judgment of sentence and fine. (R. 51.) The questions are also raised by the notice of appeal (R. 215) and the assignment of errors. (R. 217.)

ARGUMENT.

THE STATUTE IS VOID FOR UNCERTAINTY.

Public Law No. 503, 18 *U.S.C.A.* 97a, is void for uncertainty on its face in failing to prescribe specific military areas and specific restrictions upon the activities of persons within the confines of the military areas. See 59 *Corpus Juris* 601, sec. 160 and cases there cited. It is also unconstitutional and void as a delegation by Congress of legislative power to Courts and juries to determine what areas are military areas and what acts of persons committed therein shall be decided to constitute criminal acts and be punishable thereunder. *U. S. v. L. Cohen Grocery Co.,* 255 U.S.

81. The statute was enacted and became effective on March 21, 1942, and Public Proclamation No. 3, a military regulation which it would enforce, was promulgated three days later on March 24, 1942. It is, therefore, also void for uncertainty as attempting to adopt, by reference, legislative orders of executive or military officials which are not *in esse* but are unknown, indeterminate and to be prescribed *in futuro. Schechter Poultry Co. v. U. S.,* 295 U.S. 495, 55 S. Ct. 837; 16 *Corpus Juris Sec.,* pp. 349, 352; and *Ex parte Burke,* 190 Cal. 326, 328.

THE STATUTE AND PROCLAMATION ARE VOID AS ABRIDGING FUNDAMENTAL CONSTITUTIONAL PROVISIONS.

The statute is unconstitutional and void in giving effect to military orders which usurp legislative and judicial functions in violation of *Article 1,* Secs. 1 and 8, cl. 18, and *Article III* of the federal *Constitution.* Congress cannot delegate legislative power to the president or executive officers. *Field v. Clark,* 143 U.S. 649, 652. Congress is empowered to delegate a mere *limited discretionary authority* to executive officers where it first sets up in a statute a standard, rule or policy for the guidance of such officials and lodges in them the making of subordinate rules, in aid of the enforcement of the statute, and leaves to them the determination of facts to which the policy declared in the statute is to apply. The subordinate rules these officials may make must be confined to the limits prescribed by the statute. *Schechter Poultry*

Corp. v. U. S., supra; *Panama Refining Co. v. Ryan,* 293 U.S. 388. Congress has not attempted to validate Public Proclamation No. 3 and could not validate it because it does not pretend to be the product of a limited discretionary authority conferred upon its promulgator by Congress but to be a product of usurped legislative power that can be wielded only by Congress and not by a military commander.

Public Proclamation No. 3 was promulgated, according to a recital contained therein, under an asserted theory of military necessity. It has been applied, in conjunction with the statute herein as its enforcement procedure, to the appellant and other citizens of Japanese ancestry engaged in civilian walks of life within the geographical limits of the mainland United States in a region outside a theater of war and in the absence of a proclamation of martial law by Congress and in an area free from martial rule. The statute and the proclamation are void, therefore, under the rules established in *Ex parte Milligan,* 4 Wall. (U.S.) 2, in that they would suspend the federal Constitution and destroy the fundamental civil liberties it safeguards to citizens and also to those aliens unaffected by the *Alien Enemy Act,* 50 *U.S.C.A.,* Secs. 21-24.

The proclamation and the statute which would enforce its curfew regulations, travel restrictions and property deprivations are void as deprivals of liberty and property without due process of law in violation of the *5th Amendment.* These regulations and restrictions abridge *freedom of movement* and other

inherent rights vital to the maintenance of our democratic institutions. See *Crandall v. Nevada,* 6 Wall. 35, 48-49; *Williams v. Fears,* 179 U.S. 279; *Edwards v. California,* 314 U.S. 160; and *Schneider v. Irvington,* 308 U.S. 147, 161, discussing these rights. These constitutional rights also inhere in aliens (*Truax v. Raich,* 239 U.S. 33, 39) but are subject to suspension in the case of *alien enemies* during wartime under the *Alien Enemy Act.* This Act has not, however, been invoked by Public Proclamation No. 3 which derives its authority, if any it has, from Executive Order No. 9066 (7 F.R. 1407) which asserts its own authority not under this Act but upon constitutional grounds which are nowhere to be found in the Constitution. The proclamation and statute as applied to aliens outside the provisions of said Act are illegal and void.

The proclamation is also unconstitutional in that it discriminates against and denies to citizens of Japanese pedigree the possession, use and enjoyment of the private articles of personal property it forbids to them or compels them to confiscate under an asserted claim the deprivation or confiscation is for a public use or benefit. This is a taking of private property for public use without just compensation as well as a deprival of property without due process of law in violation of the *5th Amendment.* (*Smith v. Brazelton,* 1 Heisk. (Tenn.) 44, 2 Am. Rep. 678; 67 *Corpus Juris Sec.,* pp. 373 and 376.) The proclamation also infringes the right of citizens to keep and bear arms and hence is repugnant to the *2nd Amendment.* Congress is not empowered by legislation to discriminate against citi-

zens on a color or race origin basis and, consequently, the proclamation and statute are both unconstitutional and void. (See, *Yu Cong Eng v. Trinidad,* 271 U. S. 500, 46 S. Ct. 619, 625, 627; *Sims v. Rives,* 84 Fed. (2d) 871, cert. den. 298 U. S. 682; *Railroad Retirement Board v. Alton R. Co.,* 295 U. S. 330, 55 S. Ct. 758; and compare, *Buchanan v. Warley,* 245 U. S. 60, 38 S. Ct. 16.) The operation of the 5th Amendment is not suspended by war. (*U. S. v. L. Cohen Grocery Co.,* 255 U. S. 81.) Constitutional rights cannot be abrogated in wartime under a plea of military necessity except in a theater of war where the conflict rages and necessarily prevents the civil authorities from operating. (*Ex parte Milligan,* supra.) The proclamation and statute interfere with the constitutional rights and liberties of the appellant and other citizens of like racial extraction outside a theater of war and in the absence of martial law and rule and, in consequence, are void under the *Milligan* decision. If the contents of the proclamation are not either directly or indirectly authorized by the Alien Enemy Act it is also void as to alien enemies for the same reasons. Alien enemies who are not hostile to us have rights safeguarded by the Constitution. The plea that *military necessity* or *national crisis* justifies the suspension of constitutional rights by executive officials was repudiated in the *Milligan* case and rejected in *Schechter Poultry Co. v. U. S.,* 295 U. S. 495, 55 S. Ct. 837 at 842, where the Supreme Court declared:

> "Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers

> deemed to be adequate, as they have proved to be in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe that more or different power is necessary. Such assertions of extra-constitutional authority were anticipated and precluded by the explicit terms of the Tenth Amendment * * *."

The proclamation and the statute demonstrate that executive officials and Congress are not always protectors of the rights of minorities. It is to our Courts that we must look finally for the protection of the rights and liberties of minorities as observed by the Supreme Court in *Chambers v. Florida,* 309 U. S. 227, where it is stated:

> "Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement."

CITIZENS ARE NOT ALIEN ENEMIES.

Public Proclamation No. 3 treats American citizens of Japanese ancestry as alien enemies. These citizens constitute a law-abiding part of our citizenry. They have as much at stake in this country and nation as any other segment of our citizenry. Without justification and without right the proclamation labels them suspects, disloyal and criminals. Never before in our

history have innocent citizens been so treated because of the geographical origin of their ancestors. It engendered fear in them. By reason of the precedent it would establish it compels a whole nation to stand in awe of our military commanders and in fear of incurring their displeasure. Our history reveals that we have been wont to hold our military commanders and government officials in high esteem and to regard them with affection. It is startling to learn that citizens must fear their own protectors. Those who had a hand in fanning the flames of race-hatred against these citizens by dictating this discriminating policy to be enforced against them by the Army regard American citizenship very lightly when it concerns the rights of others. The proclamation herein was the prelude to the banishment of these citizens from the Pacific Coast. Under the compelling points of bayonets and threats of prosecution under the statute they have been driven into concentration camps inland. Their future is precarious, their livelihood doubtful and their constitutional rights have been destroyed.

There are over 5000 American youths of Japanese ancestry serving alongside their white brothers in our armed forces which are spread over the face of the earth. Thousands of others are serving in the Hawaiian Territorial Guard. The induction of additional numbers of these citizens was interrupted for a short space of time during which those arriving at serviceable age were temporarily classified as 4c under the Selective Service Act. The reason for this policy has never been publicly explained. It would be strange

that any officials or politicians should take it upon themselves to tell these American youths who were clamoring to fight for their country that they could not do so. This country belongs to these youths as much as to any other citizens. They cannot be discriminated against and be deprived of their birthright to defend this country by arbitrary governmental action. Our government exists for the benefit of the citizens of this Republic and not for the benefit of government officials. Our government officials are their agents and ought not to lose sight of the fact. They are accountable to their principals, these citizens and the citizenry at large. On January 28, 1943, Mr. Henry L. Stimson, Secretary of War, reversed this unwarranted policy, and announced that these youths would be absorbed into service. As quoted in the San Francisco *News* of January 28, 1943, on page 1, Mr. Simpson is reported to have stated:

> "It is the inherent right of every faithful citizen, regardless of ancestry, to bear arms in the nation's battle. When obstacles to free expression of that right are imposed by emergency considerations, those barriers should be removed as soon as humanly possible. Loyalty to country is a voice that must be heard, and I am glad that I am now able to give active proof that this basic American belief is not a casualty of war."

It is probable that every family of Japanese blood in this country and subject to our jurisdiction has a member serving in our armed forces. Does this not indicate quite clearly that these youths are loyal, patriotic and devoted to this country and nation?

Does it not constitute an irrefutable argument that their families are loyal and willing to do their share to contribute to the inevitable victory over our enemies? The bombs our Japanese enemies rained on Hawaii fell alike on our aliens and citizens resident there and destroyed many of them and much of their property. Is it any wonder that our American citizens of Japanese ancestry there and on the mainland here clamored to get into service to destroy our enemies? Is it any wonder that our alien Japanese resident there and here whose friends and relatives were high among the casualty lists in Hawaii and whose sons are in our armed forces are devoted and loyal to this country and willing to contribute their services and do what they can to defend America and to defeat our enemies? These aliens are grateful to America. They abandoned Japan to escape from the jurisdiction of a military feudalism and oppressive government. They sought the refuge of America and the protection of American democracy. In the face of these facts who would dare charge disloyalty on their part and that of their children to America?

THE STATUTE AND PROCLAMATION ARE WHOLLY VOID BECAUSE OF THE INSEVERABILITY OF THEIR VOID PARTS.

In its opinion the Court below decided that as the statute attempts to classify citizens upon a color or race basis and "to apply criminal penalties for a violation, founded upon that distinction, the action is insofar void." (R. 45.) It also declares that aliens are

entitled to the "equal protection of the laws" in ordinary times but not in times of war. (R. 45.) This conclusion is not entirely correct for alien neutrals are entitled to this protection at all times. Alien enemies are likewise entitled to this protection except when the *Alien Enemy Act* is invoked against them. See *Ex parte Kumezo Kawato,* 87 L. Ed. 94, 95.

The Court below expressly decided that the orders of General DeWitt *"were void as respects citizens"* and *"valid with respect to aliens."* (R. 46.) The statute, however, imposes its prohibitions upon all persons inasmuch as it uses the generic word *"Whoever"*. Executive Order No. 9066 authorizes the removal of *"any and all persons"* from military areas. The proclamation expressly applies to *"all alien Japanese, Germans, and Italians and all persons of Japanese ancestry"* within Military Area No. 1. The statute and proclamation apply to *all persons* whether citizens or aliens and, in consequence, are entirely void because the respective parts of each are inseparably connected and are not severable so as to apply to alien enemies to the exclusion of alien neutrals and citizens. The opinion of the Court below is, therefore, erroneous and the judgment void. See *Railroad Retirement Board v. Alton R. Co.,* 295 U. S. 330, 55 S. Ct. 758, 767, and rules and cases cited in 59 *Corpus Juris,* p. 639, Sec. 205, relating to severability.

The inseverability of the void features of the statute and of the proclamation invalidates their application to alien enemies also. It is not unlikely, however, that the action applied by the proclamation against alien

enemies which cannot be sustained under it might yet be sustainable under the theory that the action was taken pursuant to an oral command of the President authorized by the *Alien Enemy Act*. If such a command was given it has not been reported. The President invoked the *Alien Enemy Act* in Public Proclamations Nos. 2525, 2526, 2527 and 2537 and in Executive Order No. 9095 in matters involving alien enemies. See *H. R.* 310 to 315. Alien enemies are not, however, punishable under the statute herein which is void for the foregoing reasons. The trial Court's judgment that the appellant was an alien enemy amenable to the statute was erroneous because of the invalidity of the statute as well as for the reason the appellant was and is a citizen.

THE STATUTE AND PROCLAMATION DENY LEGAL EQUALITY TO CITIZENS.

The statute and proclamation discriminate against American citizens of Japanese ancestry to the exclusion of citizens of other ancestral derivation and therein do violence to the fundamental principle of legal equality upon which this nation was established. Citizenship is not a divisible thing: it is not a thing of degrees. It is a status of legal equality. A few of our native-born whites suppose they derive citizenship from the mere fact they are members of a white race but they are mistaken. They derive it from the 14th Amendment which confers citizenship upon all those who have the good fortune to be born here regardless

of their race, color or creed. The discrimination against these citizens on the basis of the geographical origin of their ancestors attempts to divide our citizenry and set up classes of citizens and degrees of citizenship. In effect it asserts the supremacy of the citizens of Anglo-Saxon, Mediterranean and African stocks in the United States under the theory they are citizens either of the pure white race or the pure black race for whom full citizenship rights are preserved. These stocks never represented races however. They represent old Continental nationalities of peoples of diverse geographical origin who for a while inhabited Europe and its isles, the Mediterranean coast and Africa and were subject to various European and African rulers. Legal equality inheres in citizenship, is an attribute of liberty and the heritage of every American citizen regardless of the geographical origin, color and creed of his forebears and is safeguarded by the 5th and 4th *Amendments* and by the privileges and immunities clause of the latter and Sec. 2 of Art. IV of the *U. S. Constitution.* Its denial is a deprival of liberty and property without due process of law. See definition of *due process of law* in *Truax v. Corrigan,* 275 U. S. 312, 331.

Nationality and not race is the characteristic of this nation.

Race purity and race type are delusions of those who entertain the notion that blood strains are pure. The belief that coloration, mere skin pigmentation, divides mankind into pure races is unfounded. Chromosones and their genes are not respecters of what is

popularly called race or race-purity. They are assurers of a necessary admixture of bloods that has enabled and will continue to enable the human race to survive in changing environments by transmitting physical qualities and immunities essential to the survival of the human race. The difference in individuals has its basis in somatic cells and, in consequence, is restricted to trifling structural details of which skin pigmentation is the most noticeable feature. These structural matters are peculiar to individuals and are not determiners of races. The only race in mankind is the human race. What are popularly considered races is a confusion of obscure ideas, vague nomenclature, confused genealogy and hazy thought. Differences in skin-pigmentation do not make races. Individuals cannot even be properly classified by coloration which is neither a criterion nor an indication of race, quality of mind or temperament. Individuals and peoples can be properly identified only by *nationality*. It is this identification by nationality that is the distinguishing characteristic of individuals. The word *nationality* ought to be substituted in the popular concept for the word *race*. Suffice to say that the nationality of all of our citizens of Japanese and other familial ancestry is absolutely American. Each citizen is an integral part of the great American family to which he is inseparably bound by the American environment ingrained in his mind. The proclamation herein denies to citizens of Japanese ancestry rights it does not disturb in others. It would whittle away citizenship rights and consequently citizenship itself.

What distinguishes a nation is a common environment of country, tradition, law and national self-interest and objectives. The imprint of this environment is indelibly stamped in the mind of each citizen and in the minds of all those who permanently reside within a country's jurisdiction. It creates nationalism which is not a thing of ancestry but of environment. The country of one's domicile and residence and the nation inhabiting it which sustain and protect him gives rise to his allegiance, loyalty and patriotism. This nation was founded by those who were seeking liberty and equality. The Constitution they gave us embodies these basic concepts which are essential to a democratic state. The Constitution guarantees legal equality. It does not guarantee social equality which is dependent upon education, understanding and personal taste. Legal equality is a right—social equality is something that may be achieved. Legal equality is the birthright of every American citizen. Ancestry is not a determiner of constitutional right but it may be of social equality. It is not a determiner of loyalty. Singularly enough, many of those who, by the mere accident of birth, have a pinkish or whitish complexion conceive of themselves as typical representatives of a white race as though this conception of skin coloration was of more importance to this nation than the conception of an American citizen. Race, a thing of vagary, looms larger in their minds than American nationality, a thing of reality, which determines allegiance, loyalty and patriotism.

The white-complexioned in America have no legal authority to suppress the rights of the yellow, the red

and the black citizen. Ours is neither a government by majority nor plurality rule. The Constitution guarantees the rights of all and sets up barriers against such rule. If ours was a government of or by the majority we would all long ago have been of a distinctive familial type of immediate ancestry having one color and one dominant state religion. Religious wars would have torn us asunder and the most powerful religious group would have suppressed other faiths or exterminated those adhering thereto. America would have been left in the possession of the dominant Protestant element which would have asserted an Anglo-Saxon origin, a combination of old foreign nationalities, and have tolerated no inhabitants of other faiths or origin.

There are a few individuals in this country who would take delight in having our Constitution distorted into a Visigothic Code in order to suppress the rights of Jews, Japanese and other minorities. There are many would-be Caligulas in America. They are of the peculiar type who would reserve this country for the whites. They would also reserve heaven for the whites and its opposite for all others. Divine Providence would appear to have made other provisions.

STRANGE EVIDENCES OF ELECTION OF FOREIGN ALLEGIANCE.

The "evidences" on which the Court below (R. 49, 50) determined that the appellant made an election of citizenship and "chose allegiance to the Emperor

of Japan, rather than citizenship in the United States at his majority" are as follows:

(1) His father "was decorated by the Emperor of Japan".

(2) After admittance to the bar he was, at the instigation of his father, employed by the Consulate General of Japan at Chicago.

(3) While so employed he followed his employer's orders and "made speeches setting forth the philosophy and purposes of the military caste of Japan as propaganda agent for the Emperor."

(4) While so employed he was twice registered as a propaganda agent "pursuant to the regulations issued by the State Department of the United States."

(5) He remained as such "propaganda agent until after the declaration of war by this country against Japan" and after the Japanese attack on Oahu.

The Decoration.

The appellant's father received some sort of recognition, testimonial or honor in 1940 at the Japanese Consul's office in Portland. (R. 181.) The recognition apparently was given for his activities "in promoting better relations between the Japanese and Americans in Hood River." (R. 181, 182.) This was considered evidence adverse to the appellant by the trial Court whose written opinion (R. 50) recites the appellant's father "was decorated by the Emperor of Japan." This is an extraordinary finding of fact wholly un-

supported by the evidence. It was inferred from a question put by the prosecution (R. 181) and answered by the appellant as above-mentioned from hearsay. The action of the father in endeavoring to promote better relations between these Hood River people is a commendable matter. Whatever the nature of the honor, if any, bestowed upon him for his endeavors in a worthy cause, it was deserved. Our own government and also friendly societies interested in the assimilation of minority groups into community activities might have bestowed honor upon him therefor had his efforts been called to their attention. The Court below has penalized the appellant for an honor bestowed upon his father under the theory, as the opinion openly declares, that this matter was an evidence of appellant's election of allegiance to Japan. The conclusion of the trial Court is an example of illogic run wild.

The Employment.

The employment of the appellant by the Consulate General of Japan at Chicago was obtained through the instrumentality of recommendatory letters of the appellant's father, Dean Wayne L. Morse of the Oregon Law School, several other deans and officials of the university (R. 171) and sundry other persons in Hood River and Portland. (R. 155-156.) The recital in the opinion below that this employment was obtained at the instigation of the appellant's father is only partially true. The mere fact of this lawful employment is not evidence of an election upon the part of the appellant to choose "allegiance to the

Emperor of Japan'' despite the trial Court's declaration (R. 49) that it is evidence of such a choice.

The Speeches and Free Speech.

The speeches made by the appellant under the terms of his employment by the Consulate General of Japan dealt with various subjects. (R. 158, 159.) They were made during *peacetime* and before the outbreak of war. A few were explanatory of the Japanese position in the undeclared war, the Sino-Japanese conflict, with special emphasis on the economic differences between China and Japan. (R. 188, 189.) During the period of time he made these speeches our own government was carrying on normal trade relations with Japan. We were selling munitions of war to Japan which were being used to destroy Chinese lives and property. It was our national foreign policy to maintain peaceful and friendly relations with Japan and the American public never dreamed Japan had any warlike designs on us. The appellant never dreamed Japan had any warlike designs on us. Had our government believed in such designs our trade relations would have ceased abruptly and we would not have had the disaster at Pearl Harbor. The appellant never condoned the military aggression of Japan against China in any of his speeches. (R. 189.) His motives in making these speeches were honorable ones. (R. 184.) Many other persons were making similar speeches in America. The opinion below sets forth that one of the evidences of appellant's election of "allegiance to the Emperor of Japan'' was that he "made speeches setting forth the philosophy and pur-

poses of the military caste of Japan as propaganda agent for the Emperor." (R. 49-50.) Speeches made during a period we were on friendly terms with Japan and while a war between Japan and China was in progress but in which this government took no part and which related to the economic bases of that war do not form a basis for the trial Court's statement.

The characterization of a general secretary in charge of correspondence who becomes a sort of public relations man by the label of "propaganda agent" is a distortion of fact by an adroit choice of wording. Obviously the speeches made by the appellant were explanatory in nature and contained statements of opinion on controversial issues. Copies of the speeches were not introduced into evidence and the testimony as to their contents was of a rather vague nature. Suffice to say, however, that the testimony as to their contents discloses the speeches were made in peacetime and did not contain an advocacy of anything forbidden. No penalty attaches to their utterance. The guarantee of *freedom of speech* under the *1st Amendment* and the similar guarantee under the 14th contemplate absolute freedom of expression falling short of seditious utterances. See *Gitlow v. New York,* 268 U.S. 652, and formulation of *"clear and present danger"* rule in the dissent of Justice Holmes therein which became the rule established by the Supreme Court in *Schenck v. U. S.,* 249 U.S. 47. See also *Bridges v. California,* 86 L. Ed. 149, 153; *Thornhill v. Alabama,* 310 U.S. 88; *Hague v. C. I. O.,* 307 U.S. 496; *Lovell v. Griffin,* 303 U.S. 444; *Palko v. Connecticut,* 302 U.S. 319; *De Jonge v. Oregon,* 299 U.S.

353, 366, and *Stromberg v. California,* 283 U.S. 359, 368. From the meager evidence in the record as to the nature of the speeches it clearly appears they contained neither reprehensible nor unlawful utterances. It would tax the imagination to conceive how lawful speeches could be considered evidence of an election to renounce citizenship in the United States and acquire citizenship in Japan.

The Registration.

The registration of the appellant by the Consulate General with the Department of State as an employee of a foreign representative is a legal requirement. (See R. 58.) It is not evidence of an election upon the part of the appellant to choose "allegiance to the Emperor of Japan" notwithstanding the trial Court's statement in his opinion (R. 49, 50) to the contrary.

The Resignation.

We were attacked by the enemy forces of Japan at Oahu on Sunday, December 7, 1941. The news of the attack came over the radio in the late morning of the 7th and the announcement appeared in newspaper extras that evening and in the regular editions the following morning. The appellant heard the news on the day or evening of Sunday, the 7th (R. 159) but at what time the record does not disclose. He resigned his position on Monday, December 8th, the morning following the attack. (R. 160.) His resignation was very prompt under the circumstances for he could not have resigned on the Sabbath when he was not at work and the Consulate offices were closed. The

radio announcements made during the 7th exhibited confusion as to whether the hostile act was war or whether it was an unauthorized attack by uncontrolled Japanese forces acting without sanction of the Japanese government. The announcement that Japan had declared war against Great Britain and the United States was first received here from Tokyo radio reports published in the Monday morning newspapers. On December 8th Congress formally declared war against Japan. The appellant had already resigned his position. The Court's statement in the opinion (R. 50) that the appellant remained a "propaganda agent until after the declaration of war by this country against Japan" is erroneous and wholly unsupported by the testimony and facts. Its finding that the appellant remained in the employ of the Consulate General "after the treacherous attack by the armed forces of Japan upon territory of the United States in the Islands of the Pacific" (R. 50) is true only in so far as he remained therein until he had time to resign a few hours later when the Consulate office opened on Monday. His action in resigning on December 8th was not only prompt but was probably tendered without verification of the fact that the hostile attack was actually the commencement of war.

THE ASTONISHING CONCLUSIONS DRAWN BY THE TRIAL COURT.

In the opinion (R. 50) the trial Court concluded that the appellant "served the purpose and philosophy of the ruling caste of Japan as a propaganda agent

because he could speak English, and only resigned when it seemed apparent that he could no longer serve the purposes of his sovereign in that office, but could do better execution in the event he could be commissioned an officer in the armed forces of the United States on active service." It also concluded that "since Yasui is an alien who committed a violation of this act, which included by reference the regulations of the commander referring to aliens, the Court finds him guilty."

These are astonishing conclusions. The appellant is an American citizen by birth. He is domiciled here and resides here. He was reared and educated here. He and his parents are Methodists. He was commissioned as a reserve officer and took his oath of allegiance as such *after* he had attained his majority. He is a registered voter. He is an attorney-at-law and doubtlessly took his oath of allegiance to this country upon being admitted to the bar when he was almost 23 years of age. He is a member of the Japanese-American Citizens League. (R. 178.) It is doubtful if there are persons in the United States whose devotion and loyalty to this country exceeds that of the members of this League. They have no peers in patriotism. The appellant tendered his services to this country as a reserve officer on December 8, 1941, the day following the Pearl Harbor attack and the day on which Congress declared war on Japan. Thereafter he eagerly sought to be assigned to active duty against our enemies. What more could he offer to his country to demonstrate his loyalty, devotion and allegiance? The testimony of impartial witnesses

proves that he viewed and had declared the Japanese government to be a criminal one. (R. 112, 117.) That he is devoted to the United States was amply proved by his declarations that he would intern and, if necessary, destroy all the Japanese in this country had he been in command of our defense and believed such action necessary to our safety. (R. 113, 125, 126, 128, 160 and 186.)

It is apparent from the record that the trial Court reached its incredible conclusions from the appellant's responses to an interrogation by the Court. (R. 193-201.) It appears that one of the reasons the Court found him guilty is that the appellant accepted his employment after he had heard stories of the prewar utterances of Matsuoko, an old graduate of the University of Oregon, who became, for a while, a foreign minister of Japan. (R. 193-194.) Matsuoka was an admirer of Mussolini and an articulate person whose rise to political heights in Japan was meteoric and whose drop to political depths of unpopularity was just as rapid because of his exaggerated self-importance and bellicose statements. He was the man who attained widespread publicity by walking out on the League of Nations and was once widely quoted as stating "Mussolini stalks with God", the substitution of the word stalks for the word "walks" having been unintentional. Why should the utterances and attitude of one Japanese official, known to the appellant only by hearsay reputation, have prevented him from accepting employment in the Japanese Consulate General's office?

The underlying reason, however, for the Court's amazing finding of guilt is that the appellant in his civilian capacity as a citizen would test the constitutionality of this proclamation whereas if called into active military service he would obey the mandates thereof as orders of his commanding officer. (R. 197-201.) The trial Court evidently entertained a notion that a reserve officer who is not in active service and whose status is that of a civilian engaged in private pursuits occupies the status of a military man who is within the jurisdiction of the military authorities and must obey military orders whether constitutional or not. Such a concept is entertained only by those whose background or profession is a military one. Military government cannot be substituted for civil government for civilians holding reserve commissions who are not in active military service. If it could all that would be necessary to supplant civil law would be for the government to declare every person in the country a reserve soldier subject to military law and discipline.

CONCEPTS OF INTERNATIONAL LAW.

In deciding that the appellant was not a citizen but an alien enemy, the trial Court made the following remarkable statement in its opinion (R. 46):

> "By international law, however, he was also a citizen of Japan and subject of the Emperor of Japan. According to international law, also, he had, upon attaining his majority, but not before, the right of election as to whether he would ac-

> cept citizenship in the United States or give his allegiance to the Emperor to whom he was bound by race, the nativity of his parents and the subtle nuances of traditional mores engrained in his race by centuries of social discipline."

The international law to which the Court refers is non-existent. The authority cited by the Court in support of this extraordinary conclusion is *Perkins v. Elg,* 307 U. S. 325, a case involving the laws of Sweden and the United States but not the laws of Japan. The case held that where a native born child had been taken to Sweden where she was, under Swedish law, deemed a citizen of Sweden she was entitled to return here upon attaining her majority and elect to retain American citizenship.

A grant of citizenship by a foreign power to persons outside its own territorial jurisdiction and within the jurisdiction of another power does not establish dual citizenship. It is a mere offer to individuals requiring their acceptance and the consent of the government having actual jurisdiction over them. In international law dual citizenship exists when a person holding citizenship in one country is physically present in the territorial jurisdiction of a foreign power which, by reason of his presence there, recognizes him as a person entitled to citizenship rights. In such an event the person does not lose his original citizenship except by renunciation or expatriation according to the laws of the country in which he holds original citizenship. The only exception to these rules is where two countries by law confer citizenship

directly upon persons by consent of the respective sovereigns but in such instances the jurisdiction of each is operative only when the person is physically within its territory. A case of this nature is that of the lineal descendants of General Lafayette who hold French citizenship by reason of French law and also American citizenship by virtue of an act of Continental Congress, but the citizenship rights they hold in the United States can be exercised only when they are physically present within our territorial limits.

The claims of the present German government that all descendants of Germans wheresoever situated are German subjects is not a rule of international law but a wild fancy of the sabre-rattling individuals who hold the German nation in a vise of terror. These absurd claims do not establish dual citizenship or allegiance. In whatever light a foreign power views American citizens in America who are descended from ancestors who once inhabited the presently held terrain of the foreign power no sober-minded American citizen would entertain a motion that it vested foreign citizenship in him or gave the foreign power jurisdiction over him.

The Appellant Was Not Expatriated.

The international law to which the Court below adverted in its opinion to support its conclusion but which is in nowise supported by its citations has neither reality nor significance. Since 1924 the Japanese nationality law has provided that the only method

by which an American born Japanese can obtain rights to Japanese citizenship is by being registered at birth with a Japanese consular official. See *H. R.* 2124, p. 85, note 80. The appellant was never so registered. Such a registration, however, could not constitute dual citizenship. The act of registration by one's parents could not deprive a minor of citizenship in the United States and could not render him subject to the jurisdiction of the Japanese government. Our expatriation statute expressly disavows the claims of all foreign governments to the allegiance of our citizens. 18 *U. S. C. A.,* Sec. 800.

The appellant is a citizen of the United States and of the State of Oregon by birth by virtue of the *14th Amendment. U. S. v. Wong Kim Ark,* 169 U. S. 649; *Morrison v. California,* 291 U. S. 82. He is also declared to be a citizen and national of the United States by an Act of Congress. See the *Nationality Act of 1940,* 8 *U. S. C. A.,* sec. 501, which was formerly sec. 1, and sec. 601. The indictment admits and alleges the fact of his citizenship. (R. 3.)

In the *Expatriation Statute* which is now incorporated in the *Nationality Act of 1940* as *Title 8 U. S. C. A.*, sec. 800, but was formerly sec. 15 thereof, the United States expressly *disavows* the claims of foreign governments to the allegiance of American citizens and their descendants. It also vests in citizens the right to expatriation. A citizen by birth, however, cannot lose American nationality and citizenship except by one of the specific methods prescribed in the Nationality Act. See 8 *U. S. C. A.,* secs. 801, 803 and 808.

The appellant herein did not lose his nationality or citizenship by any of the methods therein described.

The expatriation statute does not enable a person to become a citizen of another country without being naturalized under the authority of the foreign state. *Elk v. Wilkins,* 112 U. S. 94, 28 L. Ed. 643, 5 S. Ct. 41. In view of this statute the consent of the government is not necessary for a citizen to expatriate himself if he follows its procedure but the consent of the foreign sovereign is necessary for him to acquire its nationality. *Jennes v. Landes* (CC-Wash.), 84 Fed. 73. The right of voluntary expatriation is inherent if the method pursued is one of those prescribed by the expatriation statute. *U. S. ex rel. Scimeca v. Husband* (CCA-2), 6 Fed. (2d) 957. Until October 14, 1940, when it was repealed, Title 8 *U. S. C. A.,* sec. 16, provided that, "No American citizen shall be allowed to expatriate himself when the country is at war." It is not improbable that this rule obtains as a rule of common law despite the repeal of the statute inasmuch as the country has the inherent and sovereign right to the services of its citizens during war periods.

If the citizenship of the native-born can be lost on such evidence as was introduced at the trial below what is to follow as the logical result of the precedent established? Simple suspicion could cost millions their citizenship. Our Jewish citizens could be considered Orientals owing a spiritual allegiance to Judaism and be decitizenized. The Catholic minority of our citizenry could be decitizenized because it admits a spiritual allegiance to Rome and the Church

of Rome has ever desired to dominate all States. The citizens professing a spiritual tie to the lesser Protestant denominations could be decitizenized. Each person lawfully entering the employ of a foreign power's representatives in this country could be decitizenized and the consent of our administration to their employment could not be pleaded in bar. The country would be filled with inhabitants who had been converted into aliens. If they could not be deported to a foreign country their presence here would be by sufferances. They would be deprived of civil rights and occupy the status of criminals. That the native-born should hold citizenship so insecurely and be subject to losing it on such evidence as was adduced at the trial below is utterly incredible and presents a problem of the gravest danger to American democracy. The opinion below must be repudiated and the judgment reversed.

THE NUANCES OF TRADITIONAL MORES.

What are these things called "race", the "nativity of his parents" and the "subtle nuances of traditional mores engrained in his race by centuries of social discipline" which the Court below, in its opinion (R. 46), declares bound the appellant to the Emperor of Japan. They are matters of the imagination. It appears, however, that they have been construed to penalize the appellant and to deprive him of citizenship.

The geographical situs of the nativity of the parents of the appellant could have no bearing on any issue involved herein and must be disregarded. His parents, although born in Japan, have resided the greater portion of their lives in the United States where their children were born, reared, educated and employed. America sustains them and they in turn contribute their industry and services to its welfare. This family and its ties are typically American as the record demonstrates.

Heredity Versus Environment.

The appellant's *"race"* and the *"subtle nuances of traditional mores engrained in his race by centuries of social discipline"* are fictional. The word *subtle* means crafty and the word *nuances* means shades of color but as used by the Court it signifies shades of mind. The word *mores* means customs, conventions or manners. The Court's charge is, therefore, that the appellant is bound to the Emperor of Japan by "race" and the "crafty mental shades of traditional customs engrained in his race by centuries of social discipline". The charge is absurd. The Court below failed to appreciate the distinction between matters of heredity and matters of environment.

Anatomical structure and physiological function are things of heredity. Mental stability and qualities are derived from environment. Pathological conditions and psychoses may impair mental stability and qualities but these disorders are environmental and not things of an inherited nature. The brain structure is congenital and derived from heredity but the mind

with its faculties is the product of environment. The mind contains nothing of race and is not atavistic. The instincts are propensities prior to experience and independent of instruction and training. They are reflexive actions of a preservative nature characteristic of all animal life from the protoplasm upward in the evolutionary cycle. They are not things peculiar to any zoological phyla, order, class, genus or species. Were a human after birth deprived of nearly all environmental experience its brain would develop structurally but its actions would never intrude beyond the instinctive stage. The human mind is a blank at birth but it is plastic and impressible. What is subsequently impressed thereon and thereafter resolved into expression as thought is but a reflection of environment and not of heredity. There is no such thing as race instinct resulting in engrained mental nuances of traditional mores. The social traditions of one's ancestors were environmental factors acquired by them and peculiar to them but they are not experiences of an inheritable nature transmittable to descendants.

The environment of the appellant was characteristically American. The whole of the record gives a vivid picture of a young man loyal and devoted to this country and eager to be of whatever service this Nation might require. If the "subtle nuances of traditional mores" which the Court below assigned to him as hereditary factors had a factual basis not only the appellant but all mankind today would think and act in the precise patterns of ancestors, as primi-

tive man, and not at all as civilized or modern man. If these strange mores were farther traced their origin would have to be found in the first protoplasmatic bodies inhabiting the waters of the earth and exhibiting all the symptoms of instinctive reaction to stimuli and none of the mind. Animal life would never have evolved beyond the protozoic stage. The struggle of man has been upward by his individual reaction to his environment. He doesn't come into the world with the customs, conventions, manners, mores or social discipline of his ancestors engrained in his mind or attached to him as mental or physical appendages. The descendants of medieval knights are not born with the chivalric code of honor engrained in their brains and their bodies encased in suits of armor.

Race Versus Nationality.

The Court below conceived of race as something of which it peculiarly had judicial knowledge or took judicial notice in the absence of any evidence adduced thereon. Its concept was contrary to all known anthropological facts. Its conception of race was that it was a vague hereditary something imprinting all individuals at birth with the markings of special ancestral types. It believed these types derive structural and mental peculiarities traceable to remote ancestors or primitive but distinct prototypes in an unbroken and unpolluted blood line to which all descendants necessarily conform physically and mentally. It also believed the descendants owe allegiance by virtue of race

to the sovereigns of one's ancestors without considering that in the migrations and peregrinations of one's ancestors various sovereigns of diverse states may have claimed suzerainty over sundry ancestors. Allegiance is not a matter of heredity but a matter of jurisdiction dependent upon environment. It is odd too that by a process of mental gymnastics the trial Court assumed, without any supporting evidence, that the appellant's grandparents and ancestors for centuries were Japanese subjects for it asserts that mores were engrained in the appellant's race by centuries of social discipline. Whether or not the appellant's ancestors were for centuries subjects of Japanese Emperors the "social discipline" of his ancestors could not be other than those acquired environmental habits peculiar to those so disciplined. Inasmuch as their social conduct sprang from somatic brain cells and not from generative germ-cells which are the bearers of heredity their social habits were not transmittable hereditary responses. The habits acquired by each individual are peculiar to him and are not derived either from lineal or collateral ancestors but from environment. Neither the place of nativity of one's parents or ancestors nor the ethereal nuances of traditional mores which the Court below mentions could possibly have any effect whatsoever upon a person's allegiance which is a thing of nationality springing from sources quite different.

The Court below seems to have considered race a determiner of allegiance to a country and nation. The conceit of race is a species of vanity. It has been said

that if you scratch a Russian you expose a Tartar. It might also be said that if you scratch any white man you expose his Tartar ancestry for there is Mongol blood in addition to many other darker types of ancestral blood flowing in the veins of every white man. From antiquity to modern times great hordes of men have spread over the face of the earth and great mass movements are taking place today. The result has always been and perhaps always will be the intermingling and interbreeding of peoples of all colors regardless of their geographical origin and that of their ancestors. No individual alive can truthfully assert that the color of his skin is a guarantee of freedom from the blood of ancestors whose skins were of coloration other than his own. Any reputable anthropologist and ethnologist would readily admit that every individual alive has traces of blood derived from ancestors of every conceivable type of skin pigmentation and that these ancestors came from every region of the earth. Could we view the recessive colorations which are overshadowed by the dominant ones in each individual those who pride themselves on being pure whites would indeed suffer a shock. The transmission of skin coloration to progeny as an incident of physical structure does not create races. What are popularly supposed to be races is a delusion. Nationality has reality. Peoples throughout the world are properly classifiable by *nationality* and by no other means. Citizenship is a product of nationality and, under a democratic constitutional government, is not a thing of degrees.

CONCLUSION.

The opinion of the Court below was correct only in so far as it held that the statute and proclamation involved herein were inapplicable to citizens. It is erroneous in that it operates to deprive the appellant of citizenship without an iota of evidence that he renounced or lost American citizenship and without a scintilla of evidence of any allegiance upon his part to Japan. Contrary to the whole of the evidence introduced at the trial below the Court decided the appellant to be an alien enemy. The judgment is in nowise supported by the evidence. It is in nowise supported by the reasoning couched in the opinion of the Court below. It should be reversed.

Dated, San Francisco,
February 17, 1943.

Respectfully submitted,
WAYNE M. COLLINS,
Amicus Curiae.